SYED HUSSAIN ABDUL RAHMAN ALKAFF & ORS.

v.

TEO EE HUP

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
TS SINNATHURAY J
LAI KEW CHAI J
[CIVIL APPEAL NO. 7 OF 1982]
14 OCTOBER 1982

LANDLORD AND TENANT: *Tenancy - Increase of rental - Subletting - Breach of agreement - Notice to quit - Claim for repossession.*

CIVIL PROCEDURE: *Appeal - Whether to be allowed on grounds not raised in the petition.*

The appellants, the trustees of the 1898 Alkaff settlement and the landlords of no: 191, Beach Road, (the premises) claimed possession of the premises from the respondent the tenant. The ground for repossession was that the tenant was in breach of a condition of his tenancy not to sublet.

By a tenancy agreement dated 29 January 1966 the tenant was to pay a monthly rental of $224.40 payable according to the Mohammedan calendar and he was prohibited from subletting without the landlords' consent. The said premises were subject to the provisions of the Control of Rent Act (Cap. 266). The rent of the premises was increased to $278.60 by an order of the Rent Conciliation Board dated 24 May 1974 and the rental took effect retrospectively on 1 February 1974 according to the Gregorian calendar. For this purpose the landlords gave a notice to quit dated 28 December 1973, terminating the tenancy on 31 January 1974.

The landlords claimed that in 1977 they became aware that the tenant had sublet part of the premises and therefore stopped collecting rent and served a notice to quit dated 28 July 1977 determining the tenancy according to the Mohammedan calendar on 13 October 1977. By an order dated 16 August 1982 one Mr. Lim Kain Yait who became the owner of the premises was substituted as the appellant in place of the trustees. The learned senior district Judge gave judgment for the landlords for possession of the premises, *mesne* profits and costs. He held that the subletting by the tenant in 1970 was in breach of the tenancy agreement and this entitled the landlords to terminate the tenancy and reenter the premises. On appeal to the High Court by the tenant, the judgment was reversed on the grounds that the second notice to quit was tainted with illegality and therefore "cannot be availed of as a necessary step in the action for possession."

Held:

[1] There was no merit in the submission of counsel for the appellant that the learned Judge ought not to have allowed the appeal on grounds not raised in the petition of appeal.

[2] It was not reasonable for the appellant who recently became the owner of the premises to succeed against the tenant who has been in the premises since 1966.

[Appeal dismissed with costs.]

Case referred to:

Koh Chee Chong v. Chop Fook On [1957] 23 MLJ 197

Legislation referred to:
Control of Rent Act (Cap. 266) [Sing], ss. 7(2), 15(1)(b)

JUDGMENT

The appellants, the trustees of the 1898 Alkaff settlement who brought this appeal, as plaintiffs in district Court summons no. 5601 of 1978, claimed possession of No. 191 Beach Road ("the premises") from the respondent, the first defendant in the action, on the ground that the respondent was in breach of a condition of his tenancy not to sublet. Before the appeal came on for hearing however, by an order of Court dated 16 August 1982, Mr. Lim Kain Yait who had bought the premises in March 1982 was substituted as the appellant in place of the trustees. The appeal heard on 14 September 1982 was dismissed with costs. We now give our reasons.

The parties are hereafter referred to as "the landlords" and "the tenant".

It is not in dispute that the premises were subject to the provisions of the Control of Rent Act ("the Act") (Cap. 266); that the tenant was in possession of the premises under a tenancy agreement dated 29 January 1966 at the monthly rental of $224.40 payable according to the Mohammedan calendar; and that under Clause 2(b) of the said agreement the tenant was prohibited from subletting without the landlords' consent.

It is also not in dispute that on the application of the landlords to the Rent Conciliation Board ("the Board"), by an order of the board dated 24 May 1974, the rent of the premises was increased from $224.40 the $278.60 and the rent retrospectively took effect, according to the Gregorian calendar, on 1 February 1974. In order to make the application, the landlords had to comply with s. 7(2) of the Act, the tenancy had to be determined according to law. This the landlords did by giving a notice to quit dated 28 December 1973 ("the first notice to quit") terminating the tenancy on 31 January 1974.

The claim of the landlords is that in 1977 they become aware that the tenant had sublet parts of the premises. They stopped collecting rent and served a notice to quit dated 28 July 1977 ("the second notice to quit") determining the tenancy according to the Mohammedan calendar on 13 September 1977.

As regards the subletting, the tenant does not dispute that there are subtenants on the premises. It is his case that they were already there on the first floor when in 1966 he took over the tenancy of the whole of the premises to operate a coffee shop on the ground floor thereof.

The learned Senior District Judge who heard the case found as a fact that three of the four subtenants were already on the premises in 1966, and that the landlords through their rent collector were aware of the subletting. As regards the fourth subtenant, he found that there was sub-letting by the tenant in 1970 and that it was in breach of Clause 2 (b) of the tenancy agreement. He held that this "breach alone would entitle the [landlords] under the agreement to terminate the tenancy and re-enter the premises." He accordingly gave judgment for the landlords for possession of the premises, *mesne* profits and costs.

On an appeal by the tenant to the High Court, A.P. Rajah J rejected the argument raised by counsel for the landlords that the first notice to quit had operated to terminate the contractual tenancy as between the parties, and that as from 1 February 1974, the date of the increase of rent by the Board, the tenant was merely a statutory tenant.

The learned Judge then considered the question whether the tenancy was validly terminated by the second notice to quit. He came to the conclusion that because the landlords had collected rent based on the Mohammedan calendar month of 13 months a year and not on the Gregorian calendar of 12 months a year as ordered by the Board, the rents collected were in excess of the permitted rent, and therefore, the second notice to quit was "tainted with this illegality" and "cannot be availed of as a necessary step in the action for possession". The learned Judge referred to *Koh Chee Chong v. Chop Fook On* [1957] 23 MLJ 197.

The main ground on which the appeal was allowed was that, in giving judgment for the landlords on the ground that the tenant was in breach of Clause 2 (b) of the tenancy agreement, the learned Senior District Judge had exercised the power given to him in s. 15(1)(b) of the Act, but that he had failed to consider the further requirement under the said provision whether it was "reasonable" that such judgment be given. Section 15(1)(b) reads as follows:

> Where any obligation of the tenancy other than the payment of rent(whether under the contract of tenancy or under the provisions of this Act) so far as the obligation is consistent with the provisions of this Act, has been broken or not performed by the tenant and the Court considers it reasonable that such an order or judgment be made or given.

A.P. Rajah J said:

> It seems to me therefore that the learned trial Judge gave judgment for recovery of possession under s. 15(1)(b) of the Act. However, there was no declaration or finding as to the Court considering it to be reasonable that such order or judgment be made or given as required by s. 15(1)(b). No evidence other than this sub-letting had been led before the learned trial Judge which was directed to the question of reasonableness. There was, therefore, nothing before him to which he could have directed his mind before giving his decision.... This being so, on this count alone and judgment of the lower Court cannot be supported and must be set aside.

At the hearing of the appeal before us, the only ground on which Mr. Kirpal Singh for the appellant on behalf of Mr. Lim Kain Yait who had become the landlord of the premises argued the appeal was that the learned Judge ought not to have allowed the appeal on grounds not raised in the petition of appeal. But Mr. Kirpal Singh did not submit that the grounds on which the appeal was allowed were not canvassed at the hearing of the appeal. That they were raised at the hearing is clearly borne out in the notes of argument in the record of appeal. There was, therefore, no merit in the submission of Counsel for the appellant.

We agree with A.P. Rajah J that the trial Court did not consider as it ought to have whether in all the circumstances of the case it was reasonable for an order of possession to be made against the tenant. The case of the present appellant, however, is far less sustainable than that of the trustees. Having only recently become the owner of the premises, it was clearly not reasonable that the appellant should succeed against the tenant who has been in the premises since 1966. For these reasons, we dismissed this appeal with costs.

Also found at [1982] CLJ 583